

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
BROADWING COMMUNICATIONS, LLC )  
For Approval of Financing )  
Transaction )  
\_\_\_\_\_ )

DOCKET NO. 05-0271

DECISION AND ORDER NO. 22187

Filed December 14, 2005  
At 10 o'clock A.M.

Brooke K. Kane  
for Chief Clerk of the Commission

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2005 DEC 16 A 8:14

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

ATTEST: A True Copy  
BROOKE K. KANE  
Administrative Director  
Public Utilities Commission  
State of Hawaii

Brooke K. Kane

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In the Matter of the Petition of )	
BROADWING COMMUNICATIONS, LLC )	Docket No. 05-0271
For Approval of Financing )	Decision and Order No. 22187
Transaction )	
_____ )	

DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a), 269-17, and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable.

I.

Background

A.

Description of Subject Entities

BROADWING COMMUNICATIONS, LLC, a Delaware limited liability company ("Broadwing"), is presently authorized to provide resold telecommunications services in the State of Hawaii.<sup>1</sup> Broadwing is an indirect subsidiary of Broadwing Corporation, a Delaware corporation, which is not a telecommunications carrier.

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<sup>1</sup>Broadwing received its Certificate of Authority by Decision and Order No. 20756, filed on January 13, 2004, in Docket No. 03-0359.

B.

Petition

On November 10, 2005, Broadwing filed a petition seeking commission approval, pursuant to HRS § 269-17 ("Petition"), to borrow up to \$75 million in debt financing secured by some of Broadwing's assets, and also secured and guaranteed by Broadwing Corporation and its other subsidiaries, as described in the Petition ("Proposed Financial Transaction").<sup>2</sup> Broadwing has entered into a revolving credit facility with PNC Bank, National Association (and certain other lenders) to borrow up to \$75 million, with a maturity date of October 14, 2008. Under the Proposed Financial Transaction, Broadwing will have the ability to prepay all principal without penalty or premium. The loan will be secured by a pledge of the accounts receivable of Broadwing Corporation and its U.S. subsidiaries.

Broadwing represents that the Proposed Financial Transaction (1) "will not result in a change in management matters or in the day-to-day operations in Hawaii"; (2) will not "adversely affect current or proposed operations in Hawaii"; (3) "will be transparent to customers, and will not result in the change of any rate, term or condition of service"; and (4) will "improve [Broadwing's] overall financial condition by improving cash flow and enabling the hiring of more employees, including

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<sup>2</sup>Broadwing served copies of the Petition on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate").

customer service employees.”<sup>3</sup> Broadwing also asserts that the Proposed Financial Transaction will serve the public interest in promoting competition among telecommunications carriers by providing Broadwing with the opportunity to strengthen its competitive position through access to greater financial resources. As a result, the Proposed Financial Transaction is expected to “strengthen” Broadwing’s “ability to bring competitive telecommunications services to consumers in the State of Hawaii.”<sup>4</sup>

C.

Consumer Advocate’s Statement of Position

On November 10, 2005, the Consumer Advocate filed its Statement of Position (“Statement of Position”) requesting that the commission suspend its review of the Petition until Broadwing files its 2004 Annual Financial Report, pays its public utility fee, and provides proof of compliance with the telecommunications relay service contribution requirements.

Provided that Broadwing complies with the foregoing, the Consumer Advocate recommends that the commission waive the HRS § 269-17 requirements regarding the use of loan proceeds, and approve the request to enter into the Proposed Financial Transaction. In the alternative, the Consumer Advocate recommends that the commission waive the approval requirements of HRS §§ 269-17 and 269-19.

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<sup>3</sup>See Petition at 3.

<sup>4</sup>See Petition at 4.

After receiving the Consumer Advocate's Statement of Position, Broadwing filed its 2004 Annual Financial Report, paid its public utility fee, and provided proof of compliance with the telecommunications relay service contribution requirements.

## II.

### Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Under this section, the commission will approve the proposed financial transaction if it is reasonable and consistent with the public interest.<sup>5</sup>

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expended for the foregoing described purposes. Furthermore, pursuant to HRS § 269-17, "[a]ll stock and every stock certificate, and every bond, note,

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<sup>5</sup>See Decision and Order No. 19874, filed on December 13, 2002, in Docket No. 02-0345.

or other evidence of indebtedness of a public utility corporation not payable within twelve [(12)] months, issued without an order of the commission authorizing the same, then effect, shall be void."

HRS § 269-19 requires a public utility corporation to obtain the commission's consent prior to, among other things, mortgaging, encumbering, or otherwise disposing of its property. Similar to HRS § 269-17, HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Having reviewed the record,<sup>6</sup> the commission finds and concludes that the Proposed Financial Transaction falls under the purview of HRS §§ 269-7(a), 269-17, and 269-19. Notwithstanding these regulatory requirements, HRS § 269-16.9 also permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

The commission finds that the telecommunications services currently provided by Broadwing are fully competitive,

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<sup>6</sup>The commission takes official notice of all commission records relating to Broadwing, pursuant to HAR § 6-61-48.

and Broadwing is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Financial Transaction is consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the applicable requirements of HRS §§ 269-7(a), 269-17, and 269-19 should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.<sup>7</sup> Similarly, based on the findings and conclusions stated above, the commission will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that Broadwing's Petition fails to meet any of these filing requirements.

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<sup>7</sup>See also Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a), 269-17, and 269-19 should be waived. The commission's determination, in the instant case, of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 is based on our review of Broadwing's instant Petition only. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a), 269-17 and 269-19 should not be construed by any public utility, including Broadwing, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a), 269-17 and 269-19, to the extent applicable, are waived with respect to the Proposed Financial Transaction.

2. HAR §§ 6-61-101 and 6-61-105 filing requirements, to the extent applicable, are waived.

DONE at Honolulu, Hawaii DEC 14 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou  
Stacey Kawasaki Djou  
Commission Counsel

05-0271.eh



CERTIFICATE OF SERVICE

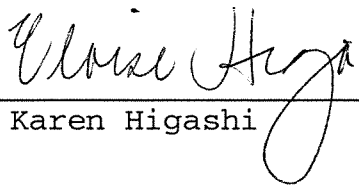
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22187 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
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ROBIN NORTON  
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210 N. PARK AVENUE  
WINTER PARK, FL 32789

DATED: DEC 14 2005

  
for Karen Higashi